

## APPEAL NO. 010363

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 24, 2001. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury on \_\_\_\_\_ (all dates are 2000 unless otherwise noted) and that the claimant did not have disability.

The claimant appealed, citing evidence and medical reports to support his position that he sustained a chlorine gas inhalation injury and has disability. The respondent (carrier) responds, urging affirmance.

### DECISION

Affirmed.

The claimant, who was employed as a boiler maker/pipe fitter, testified that at 7:12 a.m. on \_\_\_\_\_ he was working on top of a four-story tall furnace when the plant where he was working had a chlorine gas leak; that he was overcome with the fumes; that he injured his back sliding down some ladders; and that he has various respiratory ailments associated with the chlorine gas inhalation. There is medical evidence based on the claimant's history which supports the claimant's contention. Evidence to the contrary includes a statement from Mr. L, the worker who took the claimant to the first aid station; the report of the nurse at the first aid station; the testimony of Mr. E, the employer's safety manager who testified that the chlorine leak was only one tenth of one percent of the amount required for an OSHA report; and the testimony of Ms. G, a coworker who had met the claimant during their orientation and who shared smoke breaks and "lunch" (midnight lunch as both the claimant and Ms. G worked a 12-hour 8:00 p.m. to 8:00 a.m. shift) with the claimant. Ms. G testified that the claimant was a heavy smoker (denied by the claimant), and that the claimant fabricated his claim. The claimant was terminated from employment on the evening of May 13.

The hearing officer gives a detailed summary of the evidence in her Statement of the Evidence. Clearly, the testimony and evidence was conflicting and subject to different interpretations. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

In that we are affirming the hearing officer's decision that the claimant did not sustain a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability.

The decision and order of the hearing officer are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge